

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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SECTION H

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF THE OFFEROR

The Representations, Certifications, and Other Statements of the Offeror, dated _____, for this contract are hereby incorporated by reference.

H.2 ENVIRONMENTAL LAWS

The Contractor shall comply with all applicable Federal, State, and local environmental laws and regulations.

H.3 GOVERNMENT-FURNISHED PROPERTY AND DATA - NONE

The Government is not obligated to, nor is it contemplated that the Government shall, furnish any real or personal property or data under this contract. Only that property and data specifically included in issued task order statements of work shall be furnished. The Contractor is not authorized to acquire any real or personal property or data at the Government's expense under this contract.

H.4 RIGHTS TO PROPOSAL DATA

Pursuant to the Section I clause entitled "Rights to Proposal Data" the following portions of the Contractor's proposal is listed as proprietary data:

Contractor's proposal dated: ___***___

Page numbers of proprietary data within the Contractor's
proposal: _____***_____

H.5 POSITION QUALIFICATIONS

Personnel assigned to the performance of this contract shall satisfy as a minimum the applicable labor category qualifications, set forth in the "Position Qualifications" attachment to this contract, except as the Contracting Officer may authorize. (See Section J, Attachment J-2 "Position Qualifications".)

H.6 DEAR 952.235-70 KEY PERSONNEL (APR 1984)

The personnel specified in the list below are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer: Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. The list in this clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

<u>NAME</u>	<u>TITLE</u>
_____	*** _____ Program Manager

*The Contracting Officer is to be notified reasonably in advance of diverting, or substitution for, any of this individual. That period of time shall not be less than thirty (30) days.

Key personnel may also be designated on individual task orders.

H.7 MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this contract, the Contracting Officer shall be the only individual authorized to:

- (a) Accept nonconforming work;
- (b) Waive any requirement of this contract; or
- (c) Modify any term or condition of this contract.

H.8 TECHNICAL DIRECTION

- (a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR) identified in each task order. The term "technical direction" is defined to include:

- (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of

- inquiry, fill in details or otherwise serve to accomplish the contractual or task order statement of work;
- (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description; or
 - (3) Review and, where required by the contract, approval of technical reports, drawings, specifications or technical portions of the work description.
- (b) Technical direction must be within the scope of the work stated in the contract. The COR does not have authority to, and may not, issue any technical direction which:
- (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes";
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee, or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (c) All technical directions shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within his/her authority under the previous paragraph of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in b(1) through b(5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the task order accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
- (1) Advise the Contractor in writing within 30 days after receipt of the

Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the ~~Changes--Cost-Reimbursement~~ ALT I clause of the contract; or

- (2) Advise the Contractor within a reasonable time that the Government shall issue a written change order.
- (e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause in Section I entitled ~~Disputes--Alternate I.~~

H.9 SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN

The Small Business and Small Disadvantaged Business Subcontracting Plan submitted by the Contractor for this contract, and approved by the Contracting Officer on _____ is, by reference, hereby incorporated in and made a material part of this contract. Any required revisions to the Plan shall be accomplished by contract modification.

H.10 SUBCONTRACTS

- (a) Prior to the placement of subcontracts and in accordance with the clause, ~~Subcontracts Under Cost-Reimbursement and Letter Contracts,~~ the Contractor shall insure that they contain:
 - (1) All of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts;
 - (2) Any applicable subcontractor Certificates of Current Cost or Pricing Data (see FAR 15.804-2) and subcontractor Representations and Certifications (see Part IV--Section K); and
 - (3) Any required prior notice and description of the subcontract is given to the Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the

respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.

- (b) The Contractor shall also obtain and furnish to the Contracting Officer either an Organizational Conflict of Interest (OCI) Disclosure Statement or Representation form in accordance with DEAR 952.209-72 ~~Organizational Conflicts of Interest~~ (June 1996)@ for all subcontractors to be used under this contract.
- (c) As necessary, the Contractor shall obtain and furnish to the Contracting Officer appropriate Foreign Ownership, Control or Influence (FOCI) documentation for all subcontractors to be utilized under this contract.

H.11 SERVICES OF CONSULTANTS

- (a) In addition to the provisions of the clause of this contract entitled ~~Subcontracts~~ (Cost Reimbursement and Letter Contracts),@ the Contractor shall obtain the Contracting Officer=s written consent prior to reimbursing any of its employees as a ~~consultant~~@ under this contract, or prior to awarding any subcontract for consulting services which will exceed ten days in any calendar year or exceed a total value of \$2,500. The Contractor shall obtain and furnish to the Contracting Officer information concerning the need for and selection of any subcontracts for consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consulting services of a similar nature.
- (b) The Contractor must obtain and furnish to the Contracting Officer either an Organizational Conflicts of Interest (OCI) Disclosure Statement or Representation form in accordance with DEAR 952.209-72 ~~Organizational Conflicts of Interest~~ (June 1996)@ for all consultants to be used under this contract.
- (c) As necessary, the Contractor shall obtain and furnish to the Contracting Officer appropriate Foreign Ownership, Control or Influence (FOCI) documentation for all subcontractors to be utilized under this contract.

H.12 CLASSIFIED MATERIAL

Performance under the proposed contract may involve access to classified material. If access to classified material is required, the offeror shall be required to obtain necessary security clearances for personnel who will have access to classified material.

H.13 CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information which, at the time of receipt by the Contractor, is in the public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies; or
 - (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access to confidential or proprietary business, technical, or financial, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.
- (d) The Contractor agrees that upon request by DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to

or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

- (e) This clause shall flow down to all subcontracts.

H.14 RESTRICTION ON PUBLICATION OF CONTRACT INFORMATION

The Contractor, his subcontractors, and his consultants may not issue any press release or otherwise publish any information obtained or generated in the performance of this contract without prior approval of the DOE Contracting Officer's Representative (COR).

H.15 PROPERTY AND SUBCONTRACTING REPORT REQUIREMENTS

Government property records, if applicable, shall be prepared and submitted in accordance with the Government Property clause of this contract. If this contract contains a Small Business and Small Disadvantaged Business Subcontracting Plan, subcontracting reports shall be prepared and submitted in accordance with the Plan and the contract clause entitled Small Business and Small Disadvantaged Business Subcontracting Plan.

H.16 DEAR 952.211-72 UNIFORM REPORTING SYSTEM (JUN 1996)

Contractor shall prepare and submit (postage prepaid) the plans and reports indicated on the DOE Form 1332.1, Reporting Requirements Checklist, or amendments to the checklist included in this contract, to the addressees and in the specified number of copies as designated in the attachment to the checklist. The Contractor shall prepare the specified plans and reports in accordance with the formats and structure set forth in DOE Order 1332.1A, version in effect on the effective date of the contract. The Contractor shall be responsible for levying appropriate reporting requirements on any subcontractors in such a manner to ensure that data submitted by the subcontractor to the Contractor is timely and compatible with the data elements that the Contractor is responsible for submitting to DOE. Plans and reports submitted in compliance with this clause are in addition to any other reporting requirements of this contract.

H.17 PERSONNEL SECURITY CLEARANCES

- (a) The contractor is required to conduct pre-employment investigative screening of prospective employees assigned to the performance of Task Orders in order to ensure trustworthiness and reliability. The investigation shall include verification of identity, previous employment and education, and the results of credit and law enforcement checks.

- (b) Personnel assigned by the contractor to work at DOE sites may be required to obtain a security clearance.
- (c) Contractor requests for building access shall be processed on a case-by-case basis. The contractor shall turn in badges for employees who are no longer working on the contract, for employees who no longer require access, or when a badge expires. Badges shall be returned to the ordering Contracting Officer=s Representative and/or cognizant security office.

H.18 TASK ORDER EFFECTIVE DATE

Unless otherwise stated in the task order, the effective date of each task order shall be the date that the Contracting Officer signed the task order. The Contracting Officer (and only the Contracting Officer) may, by telephone or facsimile, authorize the Contractor to start work on a task order. The Contractor shall commence performance upon the effective date of the task order. The Contractor shall incur costs under this contract only in performance of issued task orders. Costs not attributed to the performance of a specific task, or outside the time parameters of a specific task, shall not be allowed without the prior written consent of the Contracting Officer.

H.19 TASK ORDER INFORMATION

When requesting task proposals from the Contractor, the Contracting Officer shall provide the following information:

- (a) Task order title, task order type, and any applicable incentive fee split ratio;
- (b) Location where work is to be performed;
- (c) Description of the task to be performed and the task Statement of Work;
- (d) Identification of any special skills necessary;
- (e) Desired performance starting and ending dates; interim milestones as appropriate;
- (f) Any required travel;
- (g) Required deliverables and due dates; whether draft or final versions are required plus due dates; number of copies required; hard copy or disk copy requirements;

- (h) Any Government-furnished property or equipment to be provided;
- (i) Any security considerations; and
- (j) Any evaluation criteria.

H.20 TASK PROPOSALS

The Contractor=s task proposals shall consist of the following minimum information. Task proposals shall be submitted to the Contracting Officer within five working days after date of request, unless otherwise specified by the Contracting Officer.

- (a) Provide a description of the technical approach to be used to complete task requirements. Provide information to support any evaluation criteria.
- (b) Provide any suggested revisions to the schedule of performance and the reasons for any suggested change.
- (c) Provide direct productive labor hours (DPLH) by category. Provide total DPLH and total estimated cost for labor. Labor rates shall not exceed fixed DPLH rates included in Section B of the contract. The Contractor may propose rates lower than the contract ceiling rates for individual task orders; however, the proposed lower rates shall then be the ceiling rates for that task order.
- (d) Provide an estimated amount for travel, broken out by identified trip location, number of persons traveling, transportation mode and amount, and per diem. Reimbursement for travel shall not exceed Federal Travel Regulation (FTR) amounts.
- (e) Identify and provide estimated costs for material and supplies, as appropriate.
- (f) Provide a comprehensive estimate for each subcontractor or consultant. As appropriate, explain why subcontracted services are necessary to complete task requirements in lieu of Contractor in-house services. Estimates for subcontractor or consultant costs should be at the same level of detail as for the Contractor=s costs.
- (g) Identify and provide estimated costs for other direct costs, including but not limited to, computer time, communications, reproduction, meeting rooms, or other miscellaneous items necessary for task completion.

- (h) Identify and provide estimated indirect costs associated with other-than-DPLH amounts. Indirect cost rates cannot exceed indirect ceilings established for the Contractor.
- (i) Provide proposed fee rate. Proposed fee rate shall not exceed the ceiling fee rate included in Section B. The Contractor may elect to propose a lower fee rate for individual task orders.
- (j) Provide the total estimated cost plus proposed fee for the task effort.

H.21 TASK ORDER ISSUANCE

The Government has awarded more than one contract for the work specified in the Statement of Work of this contract. Periodically, the Contracting Officer shall issue task orders to one or more of these contractors, including the Contractor, pursuant to paragraph (a) or (b) below.

- (a) The Contracting Officer may issue a task to any one of the contractors if he or she determines, in his or her sole discretion that:
 - (1) The task is valued at \$2,500 or less;
 - (2) Following any of the procedures of paragraph (b) would result in unacceptable delays in fulfilling the requirement which is the subject of the task order;
 - (3) The task requires services that are unique or highly specialized and that only one contractor can provide at the level of quality required;
 - (4) The task is a logical follow-on to a previously-issued task order; or
 - (5) It is necessary to issue the task to a contractor to fulfill a minimum guarantee.
- (b) The Contractor agrees that issuance of a task order in accordance with any of these procedures is deemed to have provided the Contractor a fair opportunity to be considered@ as that phrase is used in Section 303J(b) of the Federal Property and Administrative Services Act of 1949, as amended.
 - (1) Issuance of task orders based entirely or substantially on cost.

(i) When the issuance of a task order is to be based entirely on cost, the Contracting Officer shall provide each contractor information as delineated in the clause entitled, "Task Order Information," of this contract relating to the prospective task, specifying that the award will be based entirely on cost. The Contractor will provide a task proposal as specified in the "Task Proposals" clause. The Government will perform an analysis of the cost proposal to assure that the rates conform to Schedule B-1 of this contract. The Contracting Officer will exercise his/her best judgment in determining whether elements of cost reasonably reflect the nature of the prospective task. To the extent necessary to assure an accurate evaluation of task proposals, the Contracting Officer will adjust the proposals, as deemed appropriate.

(ii) The Contracting Officer may choose to base award substantially on cost. In which case the Contracting Officer will issue a request for task proposals which specifies any additional selection factors, and their relative importance, to be used in the selection of the recipient of the task.

(2) Issuance of task orders based entirely or substantially on performance of previous task orders.

(i) In issuing tasks based entirely on performance of previous tasks, the Contracting Officer, along with the Contracting Officer's Representative, shall evaluate records of the contractors' technical performance and cost control on previous tasks issued under all contracts for the work specified in the Statement of Work of the contract, taking into account performance under tasks most comparable to the prospective task. In order to issue tasks on this basis where all contractors have not performed tasks under this and the companion contracts, the Contracting Officer may consider the quality of the contractors' performance approach proposals under the solicitation leading to the award of this contract, taking into account the portion of the proposal most comparable to the prospective task. After such an evaluation, the Contracting Officer will make award to the contractor he or she believes most likely to perform the task at the highest quality at the best value. If issuance of a task will be based entirely on performance of previous tasks, task proposals will not be requested.

(ii) The Contracting Officer may choose to base issuance of a task substantially on performance of previous tasks. In that case, the Contracting Officer will issue a request for task proposals which specifies

any additional selection factors, and their relative importance, to be used in selecting the recipient of the task.

- (3) Issuance of task orders based upon other criteria. In issuing tasks under this procedure, the Contracting Officer may base the issuance on any other factors which he or she deems appropriate in the exercise of sound business judgment. Such factors include, but are not limited to, selection based upon highest technical rating of proposals for performance of a prospective task, or determination by the Contracting Officer that there is need for greater balance in workload among this and the other contracts which were awarded for the work described in this contract. If the selection factor or factors involve the receipt of task proposals from the contractors, the factor or factors to be used in selecting the recipient of the task, and their relative importance, will be specified in the request for a task proposal by the Contracting Officer.
- (c) Except as specified in this clause, a task order may be issued without a request for task proposals from the contractors.
- (d) The Government may, at its sole discretion, make the determination as to whether or not a specific task should be awarded under this or any other contract.
- (e) Task order issuance is not subject to the ~~Disputes~~ clause. However, the Contractor may first raise any complaints or concerns involving task order issuance to the Contracting Officer. Should an issue not be resolved at that level, the Contractor may contact the DOE Task and Delivery Order Ombudsman. The responsibilities of the DOE Task and Delivery Order Ombudsman (see FAR 16.505(b)(4)) are delegated to the Director, Office of Clearance and Support. The name and telephone number of the current Ombudsman may be obtained from the Contracting Officer.

H.22 CONTRACT MINIMUM AND MAXIMUM LIMITATIONS

- (a) Contract Minimum Limitation. The minimum order limitation the Government is obligated to order under this contract is \$50,000.
- (b) Contract Maximum Limitation. The maximum order limitation that the Government may order under this contract, is the ceiling amount (\$25 million) of the contract. No order(s) may be issued when the dollar value exceeds the ceiling amount of the contract, either individually or by the aggregate of all orders.

- (c) Task Order Limitations. There are no task order limitations with the exception of the contract limitations specified in (a) and (b) above.

H.23 CONTRACTOR RATE CHANGES

- (a) Direct productive labor hours (DPLH) ceiling rates shall be specified in Section B, the Rate Schedule. Should the Contractor add new categories of personnel not included in the Rate Schedule, the Contractor shall provide the proposed ceiling rate(s), supporting documentation, and rationale to the Contracting Officer in order for the additional categories and their respective ceiling rates to be negotiated and the contract modified.
- (b) The Contractor=s forward pricing rates (e.g., G&A) may be changed once each year based upon the anniversary date of the contract (i.e., October of each year). Proposed rate revisions shall be submitted to the Contracting Officer and shall be supported by approved forward pricing agreements or other supporting documentation. Revised rates shall be incorporated into the contract by modification.
- (c) Only ceiling rates included in the contract shall be paid on vouchers submitted for payment for task orders issued against this contract. **No retroactive rate adjustments shall be made to the contract.** Labor hour costs and indirect rates applicable to other costs shall be reimbursed in accordance with clause 52.216-7, Allowable Cost and Payment,@ but in no event shall reimbursement exceed the ceiling rates set forth in the contract.
- (d) If the Contractor elects to propose lower ceiling rates for a given task order, then those lower ceiling rates shall supersede the ceiling rates set forth in Schedule B-1 for reimbursement of costs under that task order.